

FILED

DEC - 8 2010

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 10-31036-A-7
CHRISTOPHER BARRINGER,) Motion Control No. None
Debtor.) Date: Ex parte
) Time: Ex parte
)
)

MEMORANDUM

The chapter 7 debtor and a creditor, the Secretary of Labor, U.S. Department of Labor, have lodged an order asking the court to approve a stipulation making a debt of \$46,868.81, plus interest at the rate permitted by 26 U.S.C. § 6621, as well as a civil penalty of 20% of the amount to be paid by the debtor, nondischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(4).

A review of the docket reveals that the creditor has not filed a dischargeability complaint and the parties have not entered into a reaffirmation agreement. The debtor is represented by an attorney.

The motion to approve the stipulation will not be approved.

There are two ways to do what the parties are attempting to accomplish. They can enter into a reaffirmation agreement and request that the deadline to file a dischargeability complaint be extended beyond the deadline for rescinding the reaffirmation agreement. See 11 U.S.C. § 524(c)(4).

Alternatively, a dischargeability complaint can be filed and then the parties can enter into a stipulated judgment. While the stipulation purports to waive the necessity of filing a

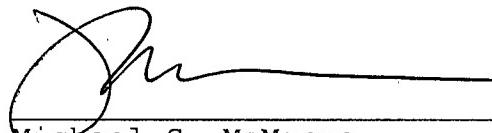
1 dischargeability complaint, the waiver will not be approved by
2 the court.

3 First, the stipulation is effectively a reaffirmation
4 agreement that does not comply with 11 U.S.C. § 524. Second,
5 Fed. R. Bankr. P. 7001 requires an adversary proceeding in order
6 to obtain a determination that a debt is nondischargeable under
7 section 523(a) (4).

8 While the court will not approve the stipulation, it is
9 effectively a motion for a further extension of time to file a
10 dischargeability complaint. The stipulation was filed on
11 November 30, the day prior to the December 1 deadline for filing
12 such complaints. The court will further extend the deadline
13 through February 1, 2011 to give the parties an opportunity
14 either to file a reaffirmation agreement with a stipulation to
15 further extend the time to file dischargeability complaints, or a
16 dischargeability complaint. No discharge will be entered by the
17 clerk until after February 1.

18 Dated: 8 Dec 2010

19 By the Court

20 
21 Michael S. McManus
22 United States Bankruptcy Judge

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1 **CERTIFICATE OF MAILING**

2 I, Susan C. Cox, in the performance of my duties as a
3 judicial assistant to the Honorable Michael S. McManus, mailed by
4 ordinary mail to each of the parties named below a true copy of
5 the attached document.

6 Eric Gassman
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8 Sacramento, CA 95811

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10 2112 Business Center Dr 2nd Fl
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25 Ryan Lucksinger
26 PO Box 1257
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28 Dated: December 6, 2010

29 _____
30 Susan C. Cox
31 Susan C. Cox
32 Judicial Assistant to Judge McManus